

sons in the administration of regulations for the improvement of livestock and livestock products.

**(e) Consultation and coordination with other Federal agencies**

**(1) In general**

The Secretary shall consult and coordinate with the head of a Federal agency with respect to any activity that is under the jurisdiction of the Federal agency.

**(2) Lead agency**

Subject to the consultation and coordination requirement in paragraph (1), the Department of Agriculture shall be the lead agency with respect to issues related to pests and diseases of livestock.

(Pub. L. 107–171, title X, § 10411, May 13, 2002, 116 Stat. 502.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**§ 8311. Reimbursable agreements**

**(a) Authority to enter into agreements**

The Secretary may enter into reimbursable fee agreements with persons for preclearance of animals or articles at locations outside the United States for movement into the United States.

**(b) Funds collected for preclearance**

Funds collected for preclearance activities shall—

(1) be credited to accounts that may be established by the Secretary for carrying out this section; and

(2) remain available until expended for the preclearance activities, without fiscal year limitation.

**(c) Payment of employees**

**(1) In general**

Notwithstanding any other law, the Secretary may pay an officer or employee of the Department of Agriculture performing services under this chapter relating to imports into and exports from the United States for all overtime, night, or holiday work performed by the officer or employee at a rate of pay determined by the Secretary.

**(2) Reimbursement**

**(A) In general**

The Secretary may require a person for whom the services are performed to reimburse the Secretary for any expenses paid by the Secretary for the services under this subsection.

**(B) Use of funds**

All funds collected under this subsection shall—

(i) be credited to the account that incurs the costs; and

(ii) remain available until expended, without fiscal year limitation.

**(d) Late payment penalties**

**(1) Collection**

On failure by a person to reimburse the Secretary in accordance with this section, the Secretary may assess a late payment penalty against the person, including interest on overdue funds, as required by section 3717 of title 31.

**(2) Use of funds**

Any late payment penalty and any accrued interest shall—

(A) be credited to the account that incurs the costs; and

(B) remain available until expended, without fiscal year limitation.

(Pub. L. 107–171, title X, § 10412, May 13, 2002, 116 Stat. 503.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**§ 8312. Administration and claims**

**(a) Administration**

To carry out this chapter, the Secretary may—

(1) acquire and maintain real or personal property;

(2) employ a person;

(3) make a grant; and

(4) notwithstanding chapter 63 of title 31, enter into a contract, cooperative agreement, memorandum of understanding, or other agreement.

**(b) Tort claims**

**(1) In general**

Except as provided in paragraph (2), the Secretary may pay a tort claim, in the manner authorized by the first paragraph of section 2672 of title 28, if the claim arises outside the United States in connection with an activity authorized under this chapter.

**(2) Requirements**

A claim may not be allowed under this subsection unless the claim is presented in writing to the Secretary not later than 2 years after the date on which the claim arises.

(Pub. L. 107–171, title X, § 10413, May 13, 2002, 116 Stat. 503.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**§ 8313. Penalties****(a) Criminal penalties****(1) Offenses****(A) In general**

A person that knowingly violates this chapter, or knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this chapter shall be fined under title 18, imprisoned not more than 1 year, or both.

**(B) Distribution or sale**

A person that knowingly imports, enters, exports, or moves any animal or article, for distribution or sale, in violation of this chapter, shall be fined under title 18, imprisoned not more than 5 years, or both.

**(2) Multiple violations**

On the second and any subsequent conviction of a person of a violation of this chapter under paragraph (1), the person shall be fined under title 18, imprisoned not more than 10 years, or both.

**(b) Civil penalties****(1) In general**

Except as provided in section 8309(d) of this title, any person that violates this chapter, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under this chapter may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of—

(A)(i) \$50,000 in the case of any individual, except that the civil penalty may not exceed \$1,000 in the case of an initial violation of this chapter by an individual moving regulated articles not for monetary gain;

(ii) \$250,000 in the case of any other person for each violation; and

(iii) \$500,000 for all violations adjudicated in a single proceeding; or

(B) twice the gross gain or gross loss for any violation or forgery, counterfeiting, or unauthorized use, alteration, defacing or destruction of a certificate, permit, or other document provided under this chapter that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

**(2) Factors in determining civil penalty**

In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the violation or violations and the Secretary may consider, with respect to the violator—

(A) the ability to pay;

(B) the effect on ability to continue to do business;

(C) any history of prior violations;

(D) the degree of culpability; and

(E) such other factors as the Secretary considers to be appropriate.

**(3) Settlement of civil penalties**

The Secretary may compromise, modify, or remit, with or without conditions, any civil

penalty that may be assessed under this subsection.

**(4) Finality of orders****(A) Final order**

The order of the Secretary assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of title 28.

**(B) Review**

The validity of the order of the Secretary may not be reviewed in an action to collect the civil penalty.

**(C) Interest**

Any civil penalty not paid in full when due under an order assessing the civil penalty shall thereafter accrue interest until paid at the rate of interest applicable to civil judgments of the courts of the United States.

**(c) Liability for acts of agents**

In the construction and enforcement of this chapter, the act, omission, or failure of any officer, agent, or person acting for or employed by any other person within the scope of the employment or office of the officer, agent, or person, shall be deemed also to be the act, omission, or failure of the other person.

**(d) Guidelines for civil penalties**

Subject to the approval of the Attorney General, the Secretary shall establish guidelines to determine under what circumstances the Secretary may issue a civil penalty or suitable notice of warning in lieu of prosecution by the Attorney General of a violation of this chapter.

(Pub. L. 107-171, title X, §10414, May 13, 2002, 116 Stat. 504.)

**TRANSFER OF FUNCTIONS**

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1907, 8309, 8314 of this title.

**§ 8314. Enforcement****(a) Collection of information****(1) In general**

The Secretary may gather and compile information and conduct any inspection or investigation that the Secretary considers to be necessary for the administration or enforcement of this chapter.

**(2) Subpoenas****(A) In general**

The Secretary shall have power to issue a subpoena to compel the attendance and testimony of any witness and the production of any documentary evidence relating to the administration or enforcement of this chapter or any matter under investigation in connection with this chapter.